IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MS JUSTICE G.ROHINI**

**WRIT PETITION NO : 15803 of 2004**

Between:

M/s. Saptagiri Bar & Restaurant, Dr. NO. 28/1663, Venkateswarapuram, Nellore, Nellore District, rep by Proprietor N. Ananda Babu S/o Fransis Naidu, R/o Nellore, Nellore District, (Licence NO.27/2003-2004)

**..... PETITIONER**

AND

1 The Commissioner, Prohibition & Excise, Hyderabad
2 The Deputy Commissioner, Prohibition & Excise, Hyderabad
3 The Prohibition & Excise Superintendent, Nellore, Nellore District
4 The Sub Divisional Prohibition & Excise Officer, Nellore, Nellore District.

**.....RESPONDENT(S)**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or Direction declaring the order passed by the 1st Respondent in Cr. NO. 14717/2004/CPE/G2, dated 29-8-2004 as arbitrary, illegal and unconstitutional and Consequently direct the Respondents to permit the petitioner to Carryon the business under IL 17 Licence No. 27/2003-2004 in premises bearing No. 28/1663, Venkateswarapuram, Nellore Town, Nellore District.

**Counsel for the Petitioner: MR.T.NIRANJAN REDDY**

**Counsel for the Respondents: GP FOR PROHIBITION & EXCISE**

**The Court at the stage of admission made the following ORDER:**

This writ petition is filed seeking a declaration that the order passed by the first respondent-Commissioner, Prohibition & Excise, Hyderabad dated 29-08-2004, as arbitrary and illegal.

The petitioner is holding a licence in Form IL 17 and carrying on business under the name and style as “M/s. Saptagiri Bar & Restaurant” at Venkateswarapuram, Nellore. Under the impugned order, the first respondent, in exercise of powers under Section 32(1) of the Andhra Pradesh Excise Act, 1968 (for short ‘the Act’), has withdrawn the licence of the petitioner in the interest of public peace and tranquility with immediate effect.

The main contention raised by the petitioner is that under Section 32(1) of the Act, a notice is mandatory to the lincensee before passing any order, but, since no such notice was issued to the petitioner, the impugned order is ex facie illegal and liable to be set aside on that ground alone. It is further contended that since the licence was issued on the basis of the report submitted by the concerned officials as to the suitability of the location of the licensed premises, the objection now raised is that the premises has been located within 100 meters from the temple is untenable and the first respondent erred in passing the impugned order without verifying the factual aspects properly. It is also contended that Sri Venkateswara Temple, which is alleged to be within a distance of 74.9 meters, is not a registered temple and therefore, on that ground also the objection raised is not tenable. The petitioner has also attributed mala fides to the second respondent- Deputy Commissioner, Prohibition & Excise, Guntur stating that he has been acting at the behest of the opposite group which is maintaining a syndicate in Nellore Town.

Though no counter-affidavit has been filed on behalf of the respondents, learned

Government Pleader appearing for the respondents, under instructions, stated that the notice as required under Section 32(1) of the Act was not issued before passing the impugned order. However, learned Government Pleader states that the other allegations of the petitioner including that the temple in question is not a registered temple are not correct.

Since admittedly, no notice which is mandatory under Section 32 (1) of the Act was issued, the impugned order is not in conformity with the requirements of the statutory provisions, and on that ground alone the same is liable to be set aside. Accordingly, without expressing any opinion on the other contentions raised by the petitioner, the Writ Petition is allowed and the impugned order is set aside. However, it is left open to the respondents to initiate fresh proceedings, following due process of law. It is also made clear that in case any fresh proceedings are initiated, it is open to the petitioner to urge all the contentions raised in this writ petition, in which event, the same shall be considered by the respondents and appropriate orders be passed in accordance with law. No costs.

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09-11-2004

kdl

To

1 The Commissioner, Prohibition & Excise, Hyderabad
2 The Deputy Commissioner, Prohibition & Excise, Hyderabad
3 The Prohibition & Excise Superintendent, Nellore, Nellore District
4 The Sub Divisional Prohibition & Excise Officer, Nellore, Nellore District

5 Two C.Cs. to the Government Pleader for Prohibition & Excise, High Court Buildings, A.P., Hyderabad, (OUT).

6 Two C.D. Copies.